

OKLAHOMA WORKFORCE DEVELOPMENT ISSUANCE #05-2017, CHANGE 2

TO: Chief Local Elected Officials
Workforce Development Board Chairs
Workforce Development Board Staff
Workforce Development Fiscal Agents

FROM: Don Morris, Executive Director

DATE: May 20, 2020

SUBJECT: Local Workforce Development Board Two-Year Certification Process

PURPOSE: To provide guidance and process for the Local Workforce Development Board two-year certification process.

REFERENCES:

- The Workforce Innovation and Opportunity Act (WIOA) Section 107
- 2 CFR 200
- 20 CFR 678.400
- 20 CFR 679.110(d)(4)
- 20 CFR 679.310(g)
- 20 CFR 679.370(o)
- 20 CFR 679.390
- 20 CFR 679.410
- 20 CFR 679.420(a)
- 20 CFR 683.200(c)(5)
- Training and Employment Guidance Letter 35-10
- Oklahoma Open Meeting Act
- Oklahoma Open Records Act
- Oklahoma Open Meeting and Open Records Book, 20th Ed.

BACKGROUND:

The Workforce Innovation and Opportunity Act (WIOA) Section 107 states the Governor of the State, in partnership with the State board, shall establish criteria for use by chief local elected officials (CLEOs) in the local areas for the appointment of members to Local Workforce Development Boards (LWDBs). The certification process is the key strategy to ensure LWDBs have the proper membership and structure to be highly effective in creating and continuously improving an aligned workforce development system, overseeing funds effectively and achieving established performance measures. The desired outcome in each local area is that the LWDB works to create collaborative partnerships with stakeholders including Economic Development, Education, Organized Labor, Transportation, Housing,

RESCISSIONS

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EXPIRATION DATE

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and other sectors, with everyone moving towards the same goals to create community workforce solutions. As a convener of partners and employers, the LWDB has a key role in creating that alignment.

STATE CERTIFICATION CRITERIA:

WIOA requires that the State certify LWDBs every two years. The term “certify” means the LWDB membership meets all required conditions for establishment according to the Act and the State’s membership criteria, including the appointments, the methods of nominations, and the final composition of the board.

Oklahoma Office of Workforce Development (OOWD) policy requires LWDBs provide updated board membership information to OOWD whenever changes to membership are made. If membership changes exceed 20 percent before the next two-year certification cycle, the board must be re-certified; this helps to ensure that LWDBs remain properly constituted and viable. Member changes shall be submitted to OOWD within ten (10) days of the new appointment(s).

The following categories will be used to determine LWDB certification (WIOA Section 107(a-c)). Documentation submitted in support of the following categories will be reviewed.

- Ensure appropriate LWDB membership, including election of a chairperson
- Ensure the proper LWDB area organizational structure
- Ensure separation (i.e. firewalls) of LWDB, One-Stop Operator, and WIOA Title I provider staff
- Build greater collaboration with Economic Development and Workforce Development Partners

MESSAGE:

The Governor’s Council for Workforce and Economic Development (GCWED) has set the following criteria to assist the LWDBs to successfully and effectively lead their local workforce development systems.

Local Policy Requirements:

20 CFR 679.310(g) requires the CLEO to establish by-laws, consistent with State policy for LWDB membership, that at minimum address:

- The formal nomination and appointment process for members and the chairperson
- Term limitations and how the term appointments will be staggered to ensure only a portion of membership expire in a given year
- The process to notify the CLEO of a LWDB member vacancy to ensure a prompt nominee
- The proxy and alternative designee process that will be used when a LWDB member is unable to attend a meeting and assigns a designee per the requirements at 679.110(d)(4).
 - The use of a proxy by a workforce board in its meetings is in violation of Oklahoma statute, but an alternative designee may be used when a local workforce development board member is unable to attend a meeting. An alternative designee may be assigned as per the following requirements:
 - If the alternative designee is a business representative, he or she must have optimum decision-making hiring authority.
 - Other alternative designees must have demonstrated experience and expertise and optimum policy-making authority.

- The use of technology that will be used to promote LWDB member participation (in accordance with Oklahoma state law)
- The process to ensure LWDB members actively participate in convening the workforce development system's stakeholders, brokering relationships with diverse range of employers, and leveraging support for workforce development activities
- A description of any conditions governing appointment or membership on the LWDB as deemed appropriate by the CLEO
- The description of how the LWDB meets its requirements to conduct business in an open manner under the "sunshine provision" of WIOA (see 679.390)
- The description of how the LWDB meets requirements in the Oklahoma Open Meetings and Open Records Acts

Membership Requirements:

The CLEO, in partnership with the State Workforce Development Board, must establish criteria for CLEOs to appoint members to LWDBs in accordance with the requirements as outlined below. The LWDB'S full membership will represent:

- Key Regional Ecosystems (economic systems);
- Community and economic development leaders/opinion leaders;
- Diversity of the workforce area;
- And the geography of the workforce area.

Business Member Representation:

WIOA Section 107(b)(2) identifies the composition of LWDB members, including member categories such as business, labor organizations, education, workforce development, and community-based organizations, adult education and literacy, economic and community development, government, WIOA Title I, and other categories.

WIOA requires that a majority of the members of the LWDB must be representatives of business in the local area. At minimum, two members must represent small business as defined by the US Small Business Administration. Additionally, the LWDB chairperson must be selected from among the business representatives.

WIOA further requires that business representatives on the LWDB represent businesses whose employment opportunities reflect the employment opportunities within that specific local area. Therefore, business representatives may be appointed from employers that are representative of the local area. In those workforce development areas that contain multiple local labor markets, business representatives on the board shall be selected on a proportionate basis from nominations. In order that business members reflect the employment opportunities of the local labor market, the desired composition of each board's business representatives is determined using the following criteria:

- Employment by industry type (Ecosystem, or economic system)
- Employment by geography
- Employment by establishment size
- Total payroll of employers

Profiles of the employment opportunities in each local labor market are available from the OOWD and/or the Oklahoma Employment and Security Commission (OESC) Economic Research

and Analysis Division. These profiles are to be used as guidelines by nominating and appointing authorities, along with the above criteria, rather than as hard and fast requirements recognizing that (1) not all employers may choose to serve on the board and (2) local knowledge of employment opportunities or personalities may indicate an appropriate alternative.

Definitions:

For the purpose of this certification process, the definition of **employer** is as follows: one who employs; especially a person, business firm, etc. that hires one or more persons to work for wages or salary.

A **single-person business**, in the case of WIOA Board membership, does not meet the requirement regarding employer with employment opportunities. However, this does not preclude a local elected official from appointing a single-employee business in the “other” category as they deem necessary. The single-employee business would be in addition to the requirement that 51 percent of board membership be comprised of employer members.

In support of the Governor’s intent that Oklahoma’s workforce development system be demand-driven, public entities should not be appointed to represent business if the public entity represents a specific membership category, such as education, community-based organizations, or program service provider. Those categories are already included in the required membership.

The definition of **optimum policy-making authority** (20 CFR 679.340(a)) means a representative who can speak affirmatively on behalf of the entity he or she represents and to commit that entity to a chosen course of action.

The definition of **demonstrated experience and expertise** (20 CFR 679.340(b)(1-2)) means an individual who is a workplace learning advisor, contributes to the field of workforce development, human resources, training and development, or a core program function, or the LWDB recognizes valuable contributions in education or workforce development fields.

Member Representation: Members of the LWDB must be individuals with *optimum policy making or hiring authority* within the organizations, agencies, or entities that they are representing. Business representatives must be owners of businesses, chief executives or operating officers, or other executives or employers with optimum policy making or hiring authority. WIOA Board members will consist, at a minimum, of the following:

WIOA Sec. 107(b) states:

Membership.--

- 1) **State criteria.**--The Governor, in partnership with the State board, shall establish criteria for use by chief elected officials in the local areas for appointment of members of the local boards in such local areas in accordance with the requirements of paragraph (2).
- 2) **Composition.**--Such criteria shall require that, at a minimum—
 - a) a majority of the members of each local board shall be representatives of business in the local area, who—

- i) are owners of businesses, chief executives or operating officers of businesses, or other business executives or employers with optimum policymaking or hiring authority;
 - ii) represent businesses, including small businesses, or organizations representing businesses described in this clause, that provide employment opportunities that, at a minimum, include high-quality, work-relevant training and development in in-demand industry sectors or occupations in the local area; and
 - iii) are appointed from among individuals nominated by local business organizations and business trade associations;
- b) not less than 20 percent of the members of each local board shall be representatives of the workforce within the local area, who
 - i) shall include representatives of labor organizations (for a local area in which employees are represented by labor organizations), who have been nominated by local labor federations, or (for a local area in which no employees are represented by such organizations) other representatives of employees;
 - ii) shall include a representative, who shall be a member of a labor organization or a training director, from a joint labor-management apprenticeship program, or if no such joint program exists in the area, such a representative of an apprenticeship program in the area, if such a program exists;
 - iii) may include representatives of community-based organizations that have demonstrated experience and expertise in addressing the employment needs of individuals with barriers to employment, including organizations that serve veterans or that provide or support competitive integrated employment for individuals with disabilities; and
 - iv) may include representatives of organizations that have demonstrated experience and expertise in addressing the employment, training, or education needs of eligible youth, including representatives of organizations that serve out-of-school youth;
- c) each local board shall include representatives of entities administering education and training activities in the local area, who—
 - i) shall include a representative of eligible providers administering adult education and literacy activities under title II;
 - ii) shall include a representative of institutions of higher education providing workforce investment activities (including community colleges);
 - iii) may include representatives of local educational agencies, and of community-based organizations with demonstrated experience and expertise in addressing the education or training needs of individuals with barriers to employment;
- d) each local board shall include representatives of governmental and economic and community development entities serving the local area, who—
 - i) shall include a representative of economic and community development entities;
 - ii) shall include an appropriate representative from the State employment service office under the Wagner-Peyser Act (29 U.S.C. 49 et seq.) serving the local area;
 - iii) shall include an appropriate representative of the programs carried out under title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 et seq.), other than section 112 or part C of that title (29 U.S.C. 732, 741), serving the local area;

- iv) may include representatives of agencies or entities administering programs serving the local area relating to transportation, housing, and public assistance; and
- v) may include representatives of philanthropic organizations serving the local area; and
- e) each local board may include such other individuals or representatives of entities as the chief elected official in the local area may determine to be appropriate.

Board Size:

As identified in WIOA Sec. 107(b) language above, LWDBs appointed under WIOA have minimum requirements as to what stakeholders are represented. WIOA also establishes minimum percentages of representation in two stakeholder categories: business and workforce.

CLEO's may appoint additional members at their discretion but must assure the majority business representation and 20% minimum workforce representation is preserved. All required WDB members must have voting privileges. The CLEO may convey voting privileges to non-required members.

The minimum size of a LWDB is 19 members under the following scenario:

Type	Members	Total
Business	9 business (2 must be small business +1 (to maintain >50%))	10
Workforce	2 labor organization 1 joint apprenticeship +1 (to maintain 20% minimum)	4
Education/Training	1 adult education/literacy 1 higher education	2
Government, Economic/Community Dev.	1 economic/community development 1 Wagner-Peyser 1 Vocational Rehabilitation	3

Nominations:

The WIOA specifies that certain representatives must be nominated for LWDB membership by particular organizations. WIOA indicates that business representatives to the LWDB must be appointed from nominees of local business organizations or business trade associations. Lead city business or trade organizations should nominate business representatives from their local labor market areas.

Local educational entities including representatives of local educational agencies, local school boards, entities providing adult education and literacy activities, and post-secondary educational institutions including representatives of community colleges where such entities exist, must be selected from individuals nominated by regional or local educational agencies, institutions, or organizations representing such local educational entities.

Representatives of labor organizations must be nominated by local labor federations, or for areas in which no employees are represented by such organizations, other representatives of employees.

LWDB staff and local elected official (LEO) must seek appropriate nominations and submit them to their CLEO for action. The CLEO may require more nominations than there are vacancies in order to exercise discretion in the selection and appointment of business representatives. In the absence of LWDB staff, the CLEO may also initiate the process of adding new members by seeking appropriate nominations, and making appointments in accordance with membership requirements, including the desire to include optional board members. However, entities that represent more than one funding stream should have no more than one representative on the Board.

Appointment of Representatives:

The CLEO will make appointments to the LWDB. Local elected officials in the workforce development area will address, in their Consortium Agreement, the selection of a *Chief* Local Elected Official and the process for making LWDB appointments. A copy of each completed appointment and nomination shall be provided as an integral document in the certification process. To avoid confusion between Chief Executive Officers (CEOs) and Chief Elected Officials (CEOs), Oklahoma is using the term Chief Local Elected Official (CLEO) for the local elected official selected to function as the “chief.”

The LWDB is appointed by the CLEO in the local area, in accordance with state criteria and the LEO consortium agreement. The LEOs, in their consortium agreement, can identify other LEOs who may share this appointment authority.

Occasionally, new business representatives determine that someone else in their organization is more appropriate to serve on the LWDB. When this occurs, it is not necessary to seek this member’s resignation and seek new nominations, etc. As long as any substitute is from the same business, and also has optimum policy making authority, it is acceptable for the CLEO to replace the originally appointed member with a designee.

WIOA LWDB

ENSURING THE LWDB AREA ORGANIZATIONAL STRUCTURE

Requirements for Use of Technology:

Technology must be used to maximize the accessibility and effectiveness of the local workforce development system. LWDBs must have and maintain a website that meets the modern Information and Communication Technology (ICT) standards, as specified in 29 CFR part 38, to promote member and community engagement. At a minimum, the website must include local board and center contact information, a calendar of meetings and events, board member roster, board meeting agendas and minutes, local plan and policies.

Requirements for Separation of LWDB, WIOA Title I Provider, and LWDB Staff:

The LWDB may not provide Career Services or be designated or certified as a One-Stop Operator, unless agreed to by the CLEO and the Governor. LWDBs also are prohibited from providing training services, unless a waiver is issued by the Governor, as outlined in 20 CFR 679.410. The regulations state the above restrictions also apply to the staff of the local board.

LWDBs must be able to study local issues, develop strategies and coalitions to address identified issues, evaluate progress, garner resources to support initiatives, align service delivery to meet the strategic objectives of the state and the local area, and to make hard decisions when there is not progress against the plans.

Requirement for Separation of LWDB and Oklahoma Works (One-Stop) Operator:

The LWDB, with the agreement of the CLEO, must select the Oklahoma Works (One-Stop) operators (OSO) in each local area through a competitive process as required by Section 121(d)(2)(A) of WIOA and related state policy, at least once every 4 years. The state requires a competitive selection process once every 4 years. At the end of the first two years of the four-year period, the LWDB in partnership with the CLEO must review the effectiveness and efficiency of the OSO. Under extenuating conditions, sole source procurement is an allowable method of procurement.

One-Stop operators may be a single entity (public, private, or non-profit) or a consortium of entities. If the consortium of entities is one of the One-Stop partners, it must include a minimum of three of the One-Stop partners described in 678.400. The agreement between the local LWDB and the One-Stop operator shall specify the operator's role and specifically describe firewalls in place to ensure separation of LWDB, One-Stop Operator, and WIOA Title I provider staff. This role may range between simply coordinating service providers within the center to being the entity to *provision* services, to coordinating activities throughout the One-Stop system. The One-Stop operator may be a single entity or a consortium of entities and may operate one or more One-Stop centers.

To comply with organizational structure requirements, LWDB certification must include:

- A description of how the LWDB functions as an independent entity
- A description of the role of your Oklahoma Works (One-Stop) Operator(s)
 - Include who the operator is,
 - Board established role,
- How the duties fit with the role of service provider, comprehensive and affiliate workforce centers, other partners, local LWDB and fiscal agent. Clarifying agreements that are for local role clarification, including between: CLEO/Board, CLEO/Fiscal Agent, LWDB/Fiscal Agent, and LWDB/Service Provider.

To Avoid Potential Conflict of Interest in Relationships between Local Elected Officials and Service Provider Entities:

TEGL 35-10 states: "providing responsible stewardship for and oversight of public funding for federally-funded workforce programs must be accomplished in a way that demonstrates strong integrity, accountability, and transparency in order to preserve the public trust.

In addition to the requirements in 2 CFR 200, which address codes of conduct and conflicts of interest, WIOA incorporates conflict of interest provisions. According to 20 CFR 683.200(c)(5), while being both a LWDB member and the recipient of WIOA funds to provide training and related services does not, by itself, violate the WIOA conflict of interest provisions, all LWDB members, including all standing committee members, must refrain from casting a vote on or participate in any decision-making capacity regarding the provision of services by themselves or any organization which that member directly represents. Members must also not vote on or participate in any decision which would provide any direct financial benefit to themselves or their immediate family.

The CLEO is granted certain duties to help further prevent potential conflicts of interest. For instance, the LWDB's fiscal agent is designated by the CLEO. While 20 CFR 679.420(a) authorizes the CLEO to designate the fiscal agent, this does not relieve the CLEO of liability if WIOA grant funds are misused, which is why the CLEO must ensure that clear roles and responsibilities are designated for the fiscal agent.

The CLEO is also granted certain duties to further avoid conflict of interest. For instance, WIOA requires that the CLEO approve LWDB budgets (although 20 CFR 679.370(o) requires that the LWDB be responsible for developing a budget for their board activities, which is also consistent with their Local WIOA Plan). Additionally, WIOA Sec.107(C)(1)(A) requires that the CLEO appoint LWDB members in accordance with the State's membership criteria.

The LWDB has the responsibility for choosing a service provider through a competitive procurement process that meets all state and local standards for competitive procurement as well as the appropriate requirements contained in Uniform Administrative Guidance 2 CFR 200. The selection of service providers must be made in a transparent and ethical manner. Extra care and scrutiny should be included if selecting a fiscal agent to also serve as a service provider. If the fiscal agent, chosen by the CLEO, is an entity under the governance structure of the LEOs, and is selected to become a service provider, it could call into question whether the LWDB is demonstrating strong integrity, accountability, and transparency in order to preserve the public trust as required in the TEGL 35-10.

Local areas are advised that organizational structures where the CLEO's fiscal agent and the service provider are both under the LEO governing structure may come under added scrutiny. Establishing an independent board as prescribed in this certification policy and ensuring the board is in charge of procuring the service provider will be a key action. LEOs, LWDBs, and board staff must ensure that they are taking all possible actions to avoid potential conflict of interest situations and demonstrating strong integrity, accountability, and transparency as required in TEGL 35-10.

CERTIFICATION:

Initial Certification:

A LWDB shall be initially certified for a period not to exceed two years if it is determined that its appointments and resulting membership composition are consistent with criteria established under WIOA Section 107 and State established criteria.

Subsequent Certification:

WIOA Section 107(c)(2) provides that once every two years one LWDB for each local area in the state will be certified. The OOWD shall subsequently recertify each LWDB every two program years if it is determined that its appointments and composition have remained in compliance with WIOA and state policy, and it is determined that the LWDB has carried out its workforce activities in the local area to enable the local area to meet its local negotiated performance standards. A LWDB will not receive subsequent certification unless performance accountability measures have been met and the LWDB demonstrates evidence of sustained financial integrity (as defined in WIOA section 1-6(e)(2), in addition to basic membership requirements. Failure of a LWDB to achieve certification shall result in reappointment and certification of another LWDB for the local area pursuant to the process described in WIOA Section 107(c)(2), et al.

Recertification:

During the two-year certification period, if a LWDB's membership change is deemed to be over 20 percent (20%) of the current certified board, a recertification must occur. Changes in LWDB membership must be reported to the OOWD within 10 days of the change. Supporting documentation of membership, nominations, and bylaws to the board must be submitted and retained.

Decertification:

In accordance with WIOA Section 107(c)(3), the Governor may decertify a LWDB after providing notice and an opportunity to comment for:

1. Fraud or abuse; or
2. Failure to carry out the functions specified for the LWDB; or
3. Nonperformance.

LWDB Certification Timeline:

A local area must meet the LWDB certification criteria established by U.S. Department of Labor regulations and State criteria established by the Governor through GCWED. Upon completion of required documents, the LWDB shall submit all information to the GCWED. The Council will review the documentation and recommend certification to the Governor.

The timeline for the LWDB certification process shall be as follows:

- Certification policy is finalized by April 30, 2019.
- LWDBs submit certification documentation as per the guidelines by May 31, 2019.
- OOWD reviews the submitted materials against the LWDB certification criteria and brings recommendations for certification to the Workforce System Oversight Committee for review and finalization by June 14, 2019.
- Council makes recommendation to the Governor by July 26, 2019.
- Certification letter to LWDBs by August 1, 2019.

ATTACHMENTS:

The request for certification must include the following information.

- Attachment 1 – Certification Form – Local Workforce Development Board Nomination Slate and Appointment Form
- Attachment 2 – Certification Form – Board Membership

EQUAL OPPORTUNITY AND NONDISCRIMINATION STATEMENT: All Recipients, and subrecipients/subgrantees must comply with WIOA's Equal Opportunity and Nondiscrimination provisions which prohibit discrimination on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, political affiliation or belief, or, for beneficiaries, applicants, and participants only, on the basis of citizenship status or participation in a WIOA Title-I financially assisted program or activity.

ACTION REQUIRED: This Oklahoma Workforce Development Issuance (OWDI) is to become a part of your permanent records and made available to appropriate staff and subrecipients. [This policy is available at http://oklahomaworks.gov/policy-center](http://oklahomaworks.gov/policy-center).

INQUIRIES: If you have any questions about this issuance, please contact System Coordinator Staff in the Oklahoma Office of Workforce Development. [Contact information can be found at http://www.oklahomaworks.gov/about](http://www.oklahomaworks.gov/about).